

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.470 OF 2005

Subrao Krishna Pharne and Ors. .. Appellants

Versus

Sarjerao Ganpati Pharne .. Respondent

Mr.U.B.Nighot for appellants

Mr.V.B.Rajure for respondent

CORAM : P.V.KAKADE, J.

DATE : 2ND AUGUST, 2005.

P.C.:

1. This is an appeal preferred by the appellants against the judgment and order passed by Addl. District Judge, Islampur dated 23.3.2004 allowing the appeal and setting aside the judgment and order passed by Civil Judge, Junior Division, Islampur and suit came to be partly decreed.

2. I have heard the learned counsel for both the

parties. Perused the record.

3. The plaintiff filed the suit against the defendants for declaration that he is the owner of the suit property and perpetual injunction that the defendant shall not obstruct his peaceful possession over the suit property. The suit was contested and the learned trial judge on the basis of available evidence on record came to the conclusion that the plaintiff failed to prove his title and possession over the suit property and also did not prove obstruction and as such the suit came to be dismissed. The appeal was carried to the District Court. The learned District Judge, after hearing both the parties came to the conclusion that the plaintiff had proved his title to the suit property as well as possession in the property in dispute. It was further held that the suit was required to be partly decreed and accordingly order was passed to that effect that the suit for possession came to be dismissed, however, the suit for perpetual injunction came to be decreed against the defendants. Hence the present appeal.

4. At the outset it may be noted that the only

question of law, which is sought to be raised, is to the effect that the suit document i.e. Suit Sale Deed was not exhibited by the lower court on the ground that it was a copy of the original Sale Deed and original document was not brought on record. The learned lower appellate court Judge reversed the said finding and concluded that the secondary evidence was indeed and was admissible in evidence, and therefore, on that basis the suit partly decreed. In this regard it must be noted that the facts revealed are sufficient to show that the original sale deed was lost when it was produced in the revenue proceeding in the Collector's Office, and therefore, the copy of the sale deed was summoned from the Registrar's Office, which was relied upon by the lower appellate court. In my considered view, the approach of the lower appellate court was legal and proper, in view of the provisions of Sections 65 and 67 of the Evidence Act. The lower court had erred in discarding the copy of the Sale Deed on the ground that such secondary evidence was not admissible in law. Be as it may, the fact remains that no substantial question of law involved in this appeal and as such the appeal deserves to be dismissed and stands dismissed with no order as to costs.

. Consequently Civil Application No.1757 of 2004
also stands dismissed with no order as to costs.